IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9365 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A W BANATWALA

Versus

COLLECTOR

Appearance:

MR AJ SHASTRI for Petitioner

Mr. A.J. Dasai, Ld.GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 24/11/2000

ORAL JUDGEMENT

1. Heard learned counsel Mr. AJ Shastri for the petitioner and Mr. A.J. Desai, learned AGP for the respondents. Rule. Learned AGP Mr. Desai waives service of rule on behalf of the respondents.

2. An application has been filed for amending the

petition. Amendment is allowed, and the same shall form part of the original petition.

3. Learned counsel for the petitioner submitted that the petitioner is running a hotel and for running the said hotel, luxury taxes are required to be paid by the petitioner. The petitioner were in default in payment of luxury taxes to the Government. However the petitioner applied to the Government for exemption. The Government considered the prayer of the petitioner and accordingly by an order dated 18-3-1999 the Government under certain conditions granted exemption for payment of luxury tax to the petitioner for the period from 1-2-1995 to 31-1-2001. However, in the said order of exemption, it has been stated that the petitioner will have to pay a sum of Rs.3,25,824-00. Learned counsel for the petitioner submitted that, the petitioner has already paid Rs.2,42,013-00. It is also submitted that the petitioner has also paid by Treasury Challan a sum of Rs.83,811-00 but the said sum deposited by the petitioner through Treasury Challan has not been considered by the Mamlatdar of Veraval Taluka. In addition to the said amount, the said Mamlatdar also claimed a sum of Rs.17,849-00 as penalty and in addition, he also claimed a sum of Rs.1,47,911-00 as interest by his notice dated 1-11-2000. The said Mamlatdar by issuing the aforesaid notice asked the petitioner either to deposit the entire amount of Rs.2,49,571-00 otherwise the hotel premises will be sold on auction on 2-11-2000. However the auction sale as proposed by the Mamlatdar on 2-11-2000 has not taken place due to the intervention by the Collector.

4. It is submitted by learned counsel for the petitioner that, if the Commissioner of Luxury Tax considers the question afresh, it would be clear that the petitioner is not in arrear of any amount and the notice issued by the Mamlatdar, Veraval taluka is without any substance. From the order of the Government dated 18-3-1999 it does not appear that the Government claimed any amount towards penalty or interest. However, it is not clear whether the Government has taken in to consideration the payment of Rs.83,811-00 paid by the petitioner by Treasury Challan towards payment of Rs.3,25,824-00. Therefore, I am of the view that the Commissioner (Luxury Tax), Government of Gujarat at Gandhinagar, may examine the matter afresh, and the petitioner is directed to file an application before the Commissioner (Luxury Tax) within ten days from today, along with copy of this order and the Commissioner (Luxury Tax) Government of Gujarat, at Gandhinagar is directed to consider the application of the petitioner

within a period of six weeks from the date of receipt of the application of the petitioner.

5. With the aforesaid observation and direction, the petition is disposed of. In the meantime, till the application is decided by the Commissioner (Luxury Tax), the Mamlatdar, Veraval is directed not to proceed further with the auction of the hotel premises of the petitioner. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service permitted.

Dt: 24-11-2000 (P.K. Sarkar, J)

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